Remarks

Status of Claims

Claims 1, 4-6, 8, 9, 14-16, 29, 31, 32, 34-37, 39 and 48-107 were pending. Claims 53-76 and 79-107 are withdrawn as drawn to a non-elected invention. Claims 1, 4-6, 8, 9, 14-16, 29, 31, 32, 34-37, 39, 48-52, 77 and 78 are under examination.

Claim Amendments

Claims 6, 59 and 83 are amended to conform the spelling of MN-3.

Claim 9 is amended to correct a grammatical error.

Claim 15 is amended to clarify what is bound to the at least one diagnostic or therapeutic agent.

Claim 34 is amended to correct a spelling error.

Claim 36 is amended to correct grammatical errors.

Claim 39 is amended to correct a grammatical error, to eliminate a redundant entry of a radionuclide and to correct an obvious error in the symbol for indium-111. There is no indium-11 known in the art or found in nature.

Applicants submit that no new matter is added by the amendment.

Claim Objections

Claim 9 is amended to correct a typographical error.

Rejection of Claims Under 35 U.S.C. 102

Claims 1, 4-6, 8, 9, 14-16, 29, 31, 34-37, 39 and 48-52 were rejected under 35 U.S.C. 102(a, e) as being anticipated by Goldenberg et al. (U.S. 6,759,045), as evidenced by Hansen et al. (Cancer, 1993, Vol. 71:3478-85) and Becker et al. (Journal of Nuclear Medicine, 1994, Vol. 35:1436-43).

The Action asserts that while the inventor declaration submitted on January 18, 2008, stated that the hybridoma producing the MN-3 antibody was not available to the public as of the instant filing date, it did not state that the hybridoma was never given out prior to the instant filing date.

Submitted herewith is a new inventor declaration under Rule 132, stating that the hybridoma producing the MN-3 antibody was not publicly available as of the instant priority date of September 30, 2002, and was also never given out prior to the instant priority date of September 30, 2002. By necessity, this includes the time in between the 1993 Hansen publication and the filing of the Goldenberg patent, as well as February 21, 2002 and August 8, 2001. All such dates would be prior to September 30, 2002.

As none of the cited prior art disclosed the CDR sequences of the MN-3 antibody and the hybridoma producing the MN-3 antibody was not publicly available at any time prior to and up to the instant priority date, Applicants submit that one of ordinary skill in the art could not have made and used a chimeric or humanized antibody comprising the MN-3 CDR sequences before the disclosure of the instant application.

Rejection of Claims Under 35 U.S.C. 103

Claims 1, 4-6, 8, 9, 14-16, 29, 31, 32, 34-37, 39 and 48-52 were rejected under 103(a) as being obvious over Hansen et al. (Cancer, 1993, 71:3478-85) in view of Robinson et al. (U.S. 5,618,920). For the same reasons stated in the preceding section on 35 U.S.C. 102, incorporated herein by reference, Applicants reiterate that the attached inventor's declaration evidences that the skilled artisan would have been unable to make and use a chimeric or humanized antibody comprising the MN-3 CDR sequences before the instant priority date. Regardless of whether or not the CDR sequences would have inherently been part of the murine MN-3 antibody, in the absence of a public source of the MN-3 hybridoma or any publication of the MN-3 CDR

sequences, the skilled artisan could not have achieved the instant invention before the disclosure of the instant application.

Claims 1, 4-6, 8, 9, 14-16, 29, 31, 32, 34-37, 39 and 48-52 were rejected under 103(a) as being obvious over Becker et al. (J. Nucl. Med. 1994: 35:1436-43) in view of Robinson et al. (U.S. 5,618,920). For the same reasons discussed immediately above, Applicants submit that the skilled artisan would have been unable to make and use the claimed subject matter prior to the disclosure of the instant application.

Conclusion

Applicants respectfully submit that the pending claims are now in condition for allowance and request an early decision to that effect.

Respectfully submitted,

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